

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Convergence Communications, Inc. and International Brotherhood of Electrical Workers, Local 21, AFL-CIO. Cases 13-CA-40308 and 13-CA-40481

August 31, 2004

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

On June 30, 2003, the National Labor Relations Board issued a Decision and Order¹ directing the Respondent, Convergence Communications, Inc., inter alia, to make Greg Miller whole for any loss of earnings and other benefits resulting from the Respondent's unlawful discrimination against him, and to make all contributions unlawfully withheld from the employees' 401(k) plan. On January 30, 2004, the United States Court of Appeals for the Seventh Circuit entered a judgment enforcing the Board's Order.²

A controversy having arisen over the amounts of backpay and 401(k) contributions due, on April 29, 2004, the Regional Director for Region 13 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations.

On June 10, 2004, the General Counsel filed with the Board a Motion for Default Judgment, alleging that the Respondent had failed to supply an adequate answer to the compliance specification as required under Section 102.56(b) of the Board's Rules and Regulations. In the motion, the General Counsel alleges that by letter dated May 20, 2004, the General Counsel notified the Respondent that no answer had been filed within the timeframe specified in the Rules and Regulations and that, unless an appropriate answer was filed by May 27, 2004, the General Counsel could seek default judgment against the Respondent. The General Counsel further alleges that on May 27, 2004, the Respondent submitted a letter that purported to be an answer to the compliance specification. In its letter, the Respondent explained that financial difficulties had compelled it to terminate its bargaining relationship with the Union and to make certain changes to its employees' terms and conditions of employment. The letter was signed by Thomas Purpura, the Respondent's president. The General Counsel asserts that the

Respondent's letter does not qualify as an answer to the compliance specification because it seeks only to relitigate the underlying unfair labor practices and is not responsive to any portion of the compliance specification.

On June 15, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56 further states:

(b) Contents of answer to specification—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation

¹ 339 NLRB No. 56 (2003).

² Case No. 03-3700.

shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

“[W]hen determining whether to grant a Motion for [Default] Judgment, the Board has shown some leniency toward respondents who proceed without benefit of counsel.” *Lockhart Concrete*, 336 NLRB 956 (2001). Here, however, the Respondent’s May 27, 2004 letter does not address itself to the compliance specification at all, much less “admit, deny, or explain each and every allegation of the specification,” as required under Section 102.56(b). Instead, the letter seeks to explain why the Respondent took the actions that were found unlawful in the underlying unfair labor practice proceeding. These explanations, however, are entirely inappropriate here, as “[i]ssues litigated and decided in an unfair labor practice proceeding may not be relitigated in the ensuing backpay proceeding.” *Paolicelli*, 335 NLRB 881, 883 (2001) (citing *Aroostook County Regional Ophthalmology Center*, 332 NLRB 1616, 1617 (2001); *Arctic Framing*, 313 NLRB 798, 799 (1994)). Moreover, even assuming no relitigation bar, we are powerless in any event to revisit the merits and alter our Order accordingly. That Order has been enforced by the court of appeals. Under Section 10(e) of the Act, we are without jurisdiction to modify a court-enforced Board Order. *Scepter Ingot Castings, Inc.*, 341 NLRB No. 134, slip op. at 1 (2004) (citing *Grinnell Fire Protection Systems Co.*, 337 NLRB 141, 142 (2001); *Regional Import & Export Trucking*, 323 NLRB 1206, 1207 (1997); *Haddon House Food Products*, 260 NLRB 1060 (1982)).

Under these circumstances, we find that the Respondent’s May 27 letter is not responsive to the allegations of the compliance specification in any way that raises an issue warranting a hearing. In the absence of good cause for the Respondent’s failure to file an adequate answer, we deem the allegations in the compliance specification to be admitted as true,³ and grant the General Counsel’s Motion for Default Judgment. Accordingly, we conclude

that the Respondent is liable for the amounts indicated in the compliance specification.

ORDER

The National Labor Relations Board orders that the Respondent, Convergence Communications, Inc., Burr Ridge, Illinois, its officers, agents, successors, and assigns, shall make whole the parties named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings on the backpay due the discriminatee required by Federal and State laws:

Miller, Greg	\$5,954.51
Scarborough Alliance Corporation [Greg Miller 401(k)]	\$ 478.80
Scarborough Alliance Corporation [Robert Kosowski 401(k)]	\$2,132.69
TOTAL	\$8,566.00

Dated, Washington, D.C. August 31, 2004

Peter C. Schaumber,	Member
---------------------	--------

Dennis P. Walsh,	Member
------------------	--------

Ronald Meisburg,	Member
------------------	--------

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ We note and correct two inadvertent errors. First, we correct sec. II of the compliance specification to reflect that the backpay period for employees Greg Miller and Robert Kosowski begins on February 13, 2002, rather than February 13, 2001. Second, we correct a mathematical error in the computation of the backpay due Miller. Attachment A of the compliance specification shows that, but for the Respondent’s unlawful conduct, Miller would have earned \$7,980.00 in the first quarter of 2002, and Miller’s interim earnings in that quarter were \$4,560.00. The net difference owed Miller for that quarter is \$3,420.00, not, as attachment A represents, \$1,368.00. In accordance with this correction, the total backpay due Miller is \$5,954.51, and the total amount owed by the Respondent is \$8,566.00.

